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10/542,077	07/13/2005	Takeshi Bandoh	CU-4322 RJS	9690
26530 7590 03/19/2009 LADAS & PARRY LLP 224 SOUTH MICHIGAN AVENUE SUITE 1600 CHICAGO, IL 60604				
EXAMINER				
WALKER, NED ANDREW				
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3781				
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**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

### Office Action Summary

**Application No.**

10/542,077

**Applicant(s)**

BANDOH ET AL.

**Examiner**

NED A. WALKER

**Art Unit**

3781

**Period for Reply** -- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 06 March 2009.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-20 is/are pending in the application.
- 4a) Of the above claim(s) 16, 18 and 19 is/are withdrawn from consideration.
- 5) ☒ Claim(s) 4-9 is/are allowed.
- 6) ☒ Claim(s) 1-3, 10, 11, 13-15, 17 and 20 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 25 August 2008 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☒ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO/SB/08)  
Paper No(s)/Mail Date 10/21/08.
- 4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date \_\_\_\_\_.
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: \_\_\_\_\_.

## **DETAILED ACTION**

### ***Election/Restrictions***

1. The Applicant's response, filed August 27, 2008, to the Requirement for Election/Restriction comprised an election of Invention 1: Claims 1-15 and 17 without traverse.

Claims 16, 18, and 19 are withdrawn from further consideration by the examiner, 37 CFR 1.142(b), as being drawn to a non-elected invention.

Examiner acknowledges Applicant's reserved right of rejoinder according to the laws and rules expressed in the MPEP, as appropriate.

2. Examiner acknowledges the newly added claim 20. Therefore claims 1-15, 17, and 20 are currently receiving examination.

### ***Drawings***

3. The new drawings were received on August 25<sup>th</sup>, 2008. These drawings are acceptable.

### ***Claim Rejections - 35 USC § 112***

4. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

5. Claim 1-15, 17, and 20 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Claim 1, lines 12-14, recites "the locking member is meshed with the lid that is in the closed state as well as is abutted with respect to an operating direction of the operation member against a locking surface of the container main body." This language is awkward and confusing, rendering the claim indefinite. Furthermore it is unclear if the locking member is abutted against the locking surface of the container main body or if the operation member is against the container main body or both.

Claim 6 incorrectly recites "groove second portion" which is indefinite. Please correct to "second groove portion" to match the previous recitation to provide consistency.

Claim 8 (line 6 and line 8) and claim 10 (line 4) are indefinite for containing "the groove potion". Please update with the appropriate modifier "first" or "second".

The recital of "the groove portion" in claim 10 and "the extracting direction" both lack sufficient antecedent basis for this limitation in the claim since the claim depends on claim 2.

Claim 9, lines 3-5, recites "the pawl portion more protruding laterally with respect to the extracting direction in which the locking member is extracted from the first groove portion of the operation member as it more advances in the extracting direction." This language is awkward and confusing, rendering the claim indefinite.

Claims 2-5, 7, 11-15, 17, and 20 are rejected for incorporating the errors from their respective parent claim by dependency.

***Claim Rejections - 35 USC § 103***

6. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

7. The factual inquiries set forth in *Graham v. John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.
2. Ascertaining the differences between the prior art and the claims at issue.
3. Resolving the level of ordinary skill in the pertinent art.
4. Considering objective evidence present in the application indicating obviousness or nonobviousness.

8. This application currently names joint inventors. In considering patentability of the claims under 35 U.S.C. 103(a), the examiner presumes that the subject matter of the various claims was commonly owned at the time any inventions covered therein were made absent any evidence to the contrary. Applicant is advised of the obligation under 37 CFR 1.56 to point out the inventor and invention dates of each claim that was not commonly owned at the time a later invention was made in order for the examiner to consider the applicability of 35 U.S.C. 103(c) and potential 35 U.S.C. 102(e), (f) or (g) prior art under 35 U.S.C. 103(a).

9. **Claims 1-3, 10, 11, 13-15, and 20 are rejected under 35 U.S.C. 103(a) as being obvious over Niles et al. (US Pat. No. 5,033,778) in view of Ikuta et al. (US Pat. No. 5,074,413).**

Niles et al. discloses a container (10) with a lid (14) comprising a container main body (FIG. 1) having a take-out port (defined by sidewalls 24, 26, 28, 30) for a content (column 1 lines 66-67), a lid (14) attached to the container main body so as to open and close the take-out port, and an operation member (36) attached to the container main body (via 38) in the state that the operation member can be operated between a close position at which it is meshed with the lid and keeps the lid in a closed state (FIG. 6) and an open position at which the operation member is released from the lid meshed therewith (FIG. 3), wherein: a locking member (38) is attached to the operation member, the locking member being movable between a locking position (FIG. 6) and a release position (FIG. 3), when the locking member is at the locking position, the locking member is meshed with the lid that is in the closed state (FIG. 6) as well as is abutted with respect to an operating direction of the operation member (FIG. 6) against a locking surface (50; column 3 lines 44-47; and see surface of 16 adjacent 38 in FIG. 6) of the container main body, thereby to make it impossible for the operation member to be operated from the close position to the open position (cannot be disposed as in FIG. 3 without release of 38), and when the locking member is at the release position, the locking member is separated from the lid that is in the closed state and from the locking surface of the container main body and permits the operation member to be operated from the close position to the open position (FIGS. 3-5); wherein an operation surface (52), which is exposed to an outside surface side of the container main body (FIG. 1), is formed to the operation member (FIG. 6; column 3 lines 47-50), and the locking member is disposed so as to be movable between the locking position and the release

position on a back surface side of the operation surface (FIGS. 3-6); wherein the operation member is disposed so as to move from the close position to the open position by depressing the operation surface and the locking member is disposed so as to move between the locking position and the release position in the state that it is supported by the operation member as to the direction in which the operation surface is depressed (FIGS. 3-6); wherein a finger-placing portion (40) is disposed to the locking member, the finger-placing portion being located at the end of the operation member in the extracting direction thereof with respect to the groove portion (46) of the operation member and protruding from the operation surface beyond the outside surface of the container main body (FIG. 6); wherein a leg portion (40), which is abutted against the locking surface of the container main body at the locking position (FIG. 6), is disposed on the back surface side of the locking member (FIGS. 2-6); wherein a locking concave portion (52) is disposed to the front edge of the lid that confronts the operation member when the lid is in the closed state (FIG. 6), and a locking portion (40) is disposed to the locking member, the locking portion being inserted into the locking concave portion when the lid is closed and the locking member is moved to the locking position and released from the locking concave portion when the locking member is moved to the release position (FIGS. 2-6); wherein a push-up member (40) is disposed to the operation member or the locking member, the push-up member coming into contact with the lid and pushing up the lid in a direction where it is opened when the operation member is operated from the close position to the open position (FIGS. 2-6); wherein the locking member has a leg portion (44) abutted therefrom in the operating direction of

the operating member, and the leg portion is abutted against the locking surface of the container main body (FIGS. 6).

Niles et al. does not disclose wherein the lid is an auto-opening lid and wherein a lid urging device (112) interposed between the container main body and the lid for urging the lid in an opening direction (column 4 lines 35-38), keeps the lid in a closed state against the lid urging device

Ikuta et al. teaches wherein the lid is an auto-opening lid and wherein a lid urging device (16) interposed between the container main body and the lid for urging the lid in an opening direction [0002].

It would have been obvious to one of ordinary skill in the art at the time the invention was made to incorporate a biased hinge as the connection between the lid and the container so that the lid is urged open when unlocked or unlatched. This teaching would also mean that the operation member would thereby keep the lid in a closed state against the lid urging device. A biased hinge for use as an auto-opening lid is old and notoriously well known within the art.

**10. Claims 1-3, 13, 14, and 20 are rejected under 35 U.S.C. 103(a) as being obvious over Peters (US Pat. No. 6,006,558) in view of Ikuta et al. (US Pat. No. 5,074,413).**

Peters discloses a container with a lid comprising a container main body (4) having a take-out port (defined by interior of 4) for a content, a lid (2) attached to the container main body so as to open and close the take-out port, and an operation member (11) attached to the container main body (FIG. 4) in the state that the operation



member can be operated between a close position at which it is meshed with the lid and keeps the lid in a closed state (FIG. 3; column 4 line 43 – column 5 line 30) and an open position at which the operation member is released from the lid meshed therewith (column 4 line 59 – column 5 line 30), wherein: a locking member (9) is attached to the operation member (FIGS. 2-3), the locking member being movable between a locking position and a release position (FIG. 2; column 4 line 59 – column 5 line 30), when the locking member is at the locking position, the locking member is meshed with the lid that is in the closed state (FIGS. 2-3) as well as is abutted with respect to an operating direction of the operation member (FIGS. 2-3) against a locking surface of the container main body (top rear surface of S in FIGS. 3), thereby to make it impossible for the operation member to be operated from the close position to the open position (column 4 line 43 – column 5 line 30), and when the locking member is at the release position, the locking member is separated from the lid that is in the closed state (column 4 line 59 – column 5 line 30) and from the locking surface of the container main body (the rotation of 9 shown by the dotted lines in FIG. 2 indicates that the top rear surface of the shaft S, seen in FIG. 3, is no longer covered) and permits the operation member to be operated from the close position to the open position (column 4 line 43 – column 5 line 30; wherein an operation surface, which is exposed to an outside surface side of the container main body, is formed to the operation member, and the locking member is disposed so as to be movable between the locking position and the release position on a back surface side of the operation surface (FIGS. 2-4; column 4 line 43 – column 5 line 30); wherein the operation member is disposed so as to move from the close

position to the open position by depressing the operation surface and the locking member is disposed so as to move between the locking position and the release position in the state that it is supported by the operation member as to the direction in which the operation surface is depressed (FIGS. 2-4; column 4 line 43 – column 5 line 30); wherein a leg portion (lower section of 9 in FIG. 2), which is abutted against the locking surface of the container main body at the locking position (FIG. 3), is disposed on the back surface side of the locking member (FIG. 3); wherein a locking concave portion (cavity where top of 9 is disposed in FIG. 2) is disposed to the front edge of the lid that confronts the operation member when the lid is in the closed state (FIG. 3), and a locking portion (T') is disposed to the locking member, the locking portion being inserted into the locking concave portion when the lid is closed and the locking member is moved to the locking position and released from the locking concave portion when the locking member is moved to the release position (FIGS. 2-3); wherein the locking member has a leg portion (9) abutted therefrom in the operating direction of the operating member, and the leg portion is abutted against the locking surface of the container main body (FIGS. 3-4).

Peters does not disclose wherein the lid is an auto-opening lid and wherein a lid urging device (112) interposed between the container main body and the lid for urging the lid in an opening direction (column 4 lines 35-38), keeps the lid in a closed state against the lid urging device

Ikuta et al. teaches wherein the lid is an auto-opening lid and wherein a lid urging device (16) interposed between the container main body and the lid for urging the lid in an opening direction [0002].

It would have been obvious to one of ordinary skill in the art at the time the invention was made to incorporate a biased hinge as the connection between the lid and the container so that the lid is urged open when unlocked or unlatched. This teaching would also mean that the operation member would thereby keep the lid in a closed state against the lid urging device. A biased hinge for use as an auto-opening lid is old and notoriously well known within the art.

**11. Claim 17 is rejected under 35 U.S.C. 103(a) as being obvious over Niles et al. (US Pat. No. 5,033,778) OR Peters (US Pat. No. 6,006,558) in view of Ikuta et al. (US Pat. No. 5,074,413), further in view of Pitts (US Pub No. 20010028561).**

Regarding claim 17, Peters/Niles et al. teaches substantially all the limitations of the claim except wherein any one of the operation member and the locking member contains a luminous material.

Pitts (figure 1) teaches wherein any one of the operation member and the locking member (66, 160, 162) contains a luminous material (40) for the purpose of providing luminosity and for affording visibility to the upper lid section in the absence of any other light source [0030].

It would have been obvious to one of ordinary skill in the art at the time the invention was made to incorporate luminous material as stated in order to provide

luminosity for affording visibility in the absence of any other light source so that a user can locate and open the lid when it is dark.

***Allowable Subject Matter***

12. Claims 4-5 and 7 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

Claims 6, 8, and 9 would be allowable if rewritten to overcome the rejection(s) under 35 U.S.C. 112, 2nd paragraph, set forth in this Office action and to include all of the limitations of the base claim and any intervening claims.

The following is a statement of reasons for the indication of allowable subject matter: the relevant prior art does not disclose the prior limitations substantially as claimed, nor would it be obvious to incorporate those limitations. Specifically, few prior art references have been found that detail the structure and function of the locking mechanism in claim 1. The difference being that few closure mechanisms require two moving parts, both of which are connected to each other, disposed on the container as opposed to the lid, and both connected to the container. Most other locking mechanisms incorporate at least some of the structure in the lid and/or only one of the moving mechanisms is in contact with the lid and the other mechanism restricts the first mechanism. As a result even fewer references contain the expanded details of the claim structure and function in the subsequent dependent claims and no art has been found to render these claims as obvious because of the detailed structure.

***Response to Arguments***

13. Applicant's arguments with respect to the claims have been considered but are moot in view of the new ground(s) of rejection.

***Conclusion***

14. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

15. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP

§ 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

16. Any inquiry concerning this communication or earlier communications from the examiner should be directed to NED A. WALKER whose telephone number is (571)270-3545. The examiner can normally be reached on Monday - Friday 7:30 AM - 5:00 PM EST.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Anthony Stashick can be reached on 571-272-4561. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

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